

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EASTERN CONTRACTORS, INC.,

Plaintiff,

v.

CITY OF WORCESTER and THOMAS R.
HOOVER, City Manager, and, HEERY
INTERNATIONAL, INC. and THOMAS E.
ELLIS, JR.

Defendants.

C.A. NO. 03-12216MLW

**JOINT MOTION OF THE PLAINTIFF, EASTERN CONTRACTORS, INC., AND
THE DEFENDANTS, CITY OF WORCESTER AND THOMAS R. HOOVER, TO
MODIFY THE COURT'S SECOND SCHEDULING ORDER**

Now comes the Plaintiff, Eastern Contractors, Inc. (hereinafter "Eastern") and the Defendants, City of Worcester (hereinafter "Worcester") and Thomas R. Hoover (hereinafter "Hoover") (collectively referred to as the "Moving Parties") and hereby move this Honorable Court to modify the scheduling order issued on January 31, 2005 as set forth below. The parties have diligently endeavored to complete discovery however three (3) depositions of key Worcester representatives had to be postponed for scheduling reasons from April 14th and April 15th, and further depositions of third parties had to be postponed due to school vacation week (April 17th to April 24th). The Moving Parties request:

(1) The deadline for which to conduct depositions be extended from April 29, 2005 up to and including June 15, 2005, an extension of approximately forty-five (45) days;

(2) That all trial expert depositions be completed by July 15, 2005, an extension of approximately forty-five (45) days, and

(4) That all dispositive motions, including motions for summary judgment, be extended to September 15, 2005, an extension of approximately forty-five (45) days.

In support of this motion, the Moving Parties state as follows:

1. This is the second modification of the scheduling order that the Parties have sought.

2. Eastern has noticed for depositions the Defendant, Worcester and the Defendant, Hoover. In response to its notices of deposition, Eastern has requested certain high ranking government officials for depositions whose schedules have made it difficult to conduct their depositions prior to April 29, 2005 as set forth in this Honorable Court's Second Scheduling Order. In addition, though counsel for Worcester and Eastern have in good faith attempted to reach an accord with regard to the scheduling of said depositions prior to April 29th, the schedules of the witnesses and counsel have prevented completion of agreed upon depositions. Further, certain follow-up depositions may be necessary of other witnesses once the primary representatives of the parties have been deposed.

3. Further, Eastern has noticed the deposition of Lamoureaux Pagano, the architect on the project, who conducted a joint review with Heery of Eastern's qualifications on the Worcester Vocational High School Project, the subject matter of this lawsuit. Lamoureaux Pagano is a necessary fact witness. As of this date, due to numerous scheduling conflicts and prior court engagements, Eastern has been unable to depose Lamoureaux Pagano but is in the process of negotiating with counsel for Lamoureaux Pagano in order to conduct the deposition in May.

5. On April 11, 2005, Defendant, Heery, filed a Motion to Quash and for Protective Order with regard to the deposition of Flansburgh Associates, Inc. It is Eastern's intent to oppose said motion and in light of the rules governing the time to file an opposition Eastern would be unable to conduct the deposition of Flansburgh Associates, Inc. until after the deadline established by this Court of April 29, 2005. In addition, counsel for Eastern is informed that Flansburgh Associates, Inc. is represented by counsel for Heery thereby exposing a possible conflict of interest with regard to its representation of both Heery and Flansburgh Associates, Inc. Eastern requires more time in which to research and analyze this conflict issue in order to bring it properly before this Honorable Court.

4. On April 13, 2005, Defendant, Worcester, filed a Motion for Protective Order seeking protective orders for the depositions of Worcester officials, Jill Dagilis, Richard Trifero and Erick Twickler. Since the filing of said motion counsel for Eastern and counsel for Worcester have engaged in further discussions to resolve the issues set forth in said motion and therefore require more time to properly address the issues without the need to burden this Honorable Court.

5. At the present time, there is substantial discovery presently scheduled in April and May including numerous deposition notices which have been submitted by Eastern to Worcester as well as to relevant and necessary third parties. In addition, there is outstanding discovery addressed to Eastern from Worcester which is complex, and in the process of being answered.

The parties have endeavored in this factually complex case to proceed with discovery in good faith, and are willing to proceed with discovery despite the pendency

of a Rule 56 motion. The parties require an additional forty-five (45) days given the schedules of the attorneys and the witnesses and conflicting engagements in order to fully conduct discovery in this case.

For the foregoing reasons, counsel for the Moving Parties respectfully request that this Honorable Court GRANT this Joint Motion to Modify the Court's Second Scheduling Order.

Respectfully submitted,
EASTERN CONTRACTORS, INC.,
By its attorneys,

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AND,

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CERTIFICATE OF SERVICE

I, Sabatino F. Leo, hereby certify that I have, on this ____ day of April 2005 served a copy of the within by first class mail, postage prepaid to all counsel of record.

//s//Sabatino F. Leo
Sabatino F. Leo